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OFFICE OF PETITIONS

In re Application :
Pikula et al. :
Application No. 09/960,638 : DECISION ON APPLICATION
Filed: September 21, 2001 : FOR PATENT TERM ADJUSTMENT
Atty Docket No. 077017-9006-00 :

This is a decision on the "APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 C.F.R. §1.705(b)" filed June 28, 2004. Applicants request that the initial determination of patent term adjustment under 35 U.S.C. 154(b) be corrected from one hundred ten (110) days to one hundred thirty-one (131) days.

The application for patent term adjustment is **GRANTED**.

The Office has updated the PAIR screen to reflect that the correct Patent Term Adjustment (PTA) determination at the time of the mailing of the Notice of Allowance is one hundred thirty-one (**131**) days. A copy of the updated PAIR screen, showing the correct determination, is enclosed.

On March 26, 2004, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment (PTA) to date is 110 days. A period of adjustment of 252 days for Office delay was reduced by periods of reduction of 108 days and 34 days for applicant delay.

On June 28, 2004, applicants timely¹ submitted an application for patent term adjustment (with required fee), asserting that the correct number of days of PTA at the time of the mailing of the Notice of Allowance is 131 days. Applicants dispute the reduction of 108 days associated with their delay in filing a complete and proper response to the Notice to File Missing Parts of Application mailed October 19, 2001. Applicants acknowledge that their response filed January 31, 2002, was received outside of the three month period provided for in § 1.704(b). Further, applicants acknowledge that their response was incomplete, and that a complete response was not received in the Office until April 16, 2002. However, given these admitted delays, applicants

¹ PALM records indicate that the Issue Fee payment was also received in the Office on June 28, 2004.

state that for the delay in filing a complete and proper response to the Notice to File Missing Parts of Application the application is subject to periods of reduction of 12 days (for the period from January 20, 2002 to January 31, 2002) and of 75 days (for the period from February 1, 2002 to April 16, 2002).

Applicants specifically state that the patent issuing from the application is not subject to a terminal disclaimer.

Applicants' arguments are well-taken. Applicants' characterizations of the amounts and grounds for reduction of the PTA for delay in filing a complete and proper response to the Notice to File Missing Parts of Application are correct. See §§ 1.704(b) and 1.704(c)(7).

In view thereof, the correct determination of patent term adjustment at the time of the mailing of the Notice of Allowance is one hundred thirty-one (131) days (252 days reduced by 121 days).

The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

Telephone inquiries specific to this decision should be directed to Nancy Johnson, Senior Petitions Attorney, at (571) 272-3219.

Karin A. Ferriter
for

Karin Ferriter
Senior Legal Advisor
Office of Patent Legal Administration
Office of Deputy Commissioner
for Patent Examination Policy

Enclosure: Copy of Revised PAIR Screen